

day in homes and places of worship to give thanks for the gift of life and to reaffirm our commitment to the dignity of every human being and the sanctity of each human life.

IN WITNESS WHEREOF, I have hereunto set my hand this 15th day of Jan., in the year of our Lord nineteen hundred and eighty-six, and of the Independence of the United States of America the two hundred and tenth.

Ronald Reagan

[FR Doc. 86-1281

Filed 1-16-86; 10:58 am]

Billing code 3195-01-M

Rules and Regulations

Federal Register

Vol. 51, No. 12

Friday, January 17, 1986

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

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DEPARTMENT OF AGRICULTURE

Office of the Secretary

7 CFR Part 17

Financing of Commercial Sales of Agricultural Commodities

AGENCY: Foreign Agricultural Service, USDA.

ACTION: Final rule.

SUMMARY: The interim rule published at 50 FR 2949 amending the regulations applicable to the financing of agricultural exports pursuant to Title I of the Agricultural Trade Development and Assistance Act of 1954, as amended (Pub. L. 480, 83d Cong.), is adopted as a final rule. The amendment provided for the financing by Commodity Credit Corporation of ocean freight charges for the carriage of commodities purchased under the Title I, Pub. L. 480 program on foreign flag vessels. Previously only the financing of ocean freight charges for such shipments on U.S. flag vessels was authorized.

EFFECTIVE DATE: January 17, 1986.

FOR FURTHER INFORMATION CONTACT:

Robert S. Simpson, Director, Pub. L. 480 Operations Division, Export Credits, Foreign Agricultural Service, Room 4549-S, U.S. Department of Agriculture, Washington, DC 20250. Telephone: (202) 447-3664.

SUPPLEMENTARY INFORMATION: This rule has been reviewed under USDA procedures established in accordance with Executive Order 12291 and Secretary's Memorandum No. 1512-1 and has been classified "not major." It has been determined that this rule will not result in an annual effect on the economy of \$100 million or more; will not cause a major increase in costs to consumers, individual industries, Federal, State or local government agencies or geographic regions; and will

not have an adverse effect on competition, employment, investment, productivity, innovation, or the ability of U.S. based enterprises to compete with foreign based enterprises in domestic or export markets.

It has been determined that the Regulatory Flexibility Act is not applicable to this rule since the rule involves foreign affairs functions of the United States and therefore neither 5 U.S.C. 553 nor any other provision of law requires publication of a notice of proposed rule making with respect to the subject matter of this rule.

Section 102 of the Agricultural Trade Development and Assistance Act of 1954, as amended, (the "Act") authorizes the Commodity Credit Corporation (CCC) to finance the sale and exportation of agricultural commodities purchased by friendly countries under the authority of Title I of the Act. This Section authorizes CCC to finance ocean freight on shipments made under Title I of the Act.

The regulations governing Title I appear at 7 CFR Part 17. Until the amendment of the regulations by the interim rule, financing any part of the ocean freight on foreign flag vessels was specifically prohibited. Although not limited by regulation, the financing of ocean freight for U.S.-flag vessels was limited, as a matter of policy, to payment of the "ocean freight differential", which is the amount determined to represent the increased freight charges incurred by participating countries for shipment on U.S. flag vessels due to the requirements of the Cargo Preference Act.

In order to accomplish the purposes of Title I of the Act, it was determined desirable to finance the ocean freight charges for shipment on foreign flag vessels in certain circumstances. For example, the importer or importing country may be experiencing a temporary period when foreign exchange is in very short supply. In such a case the U.S. Embassy may decide to recommend, for a specific year, that the U.S. Government finance the ocean freight charges for cargoes shipped on foreign flag vessels. Accordingly, the interim rule amended 7 CFR 17.9(g) so as to provide that the cost of ocean transportation on foreign flag vessels will be financed by CCC when, and to the extent, specifically provided in the applicable purchase authorization

issued to the participating foreign country. In this manner, the Department of Agriculture has flexibility in determining whether and to what extent ocean freight charges on foreign flag vessels should be financed. When financing is provided, the general provisions in the regulations covering the financing of ocean freight charges would also be applicable to foreign flag vessels. In the past when the Agency for International Development has undertaken to finance the freight charges of foreign flag vessels, the procedures of AID were necessarily added to the USDA procedures. To avoid such duplicate procedures required of importing countries, banks, and carriers, it is desirable to provide for such financing solely within the Title I program. Approval of such financing is by an inter-agency body of the U.S. Government. Current policy is to grant approval only to countries experiencing severe food shortages.

Comments on the Interim Rule

A comment period was provided through March 15, 1985 on the interim rule published in the Federal Register (50 FR 2949).

Four comments were received. All comments were given full consideration. All letters received are on file and available for public inspection in Room 4549, South Building, 14th and Independence Avenue, SW., Washington, DC.

Comments: Commentators suggested that the USDA should clarify the type of emergency, limit the duration and geographic scope, and make clear that the financing of ocean freight will apply equally to both U.S. and foreign flag vessels.

Response: The purpose of the amendment was to authorize financing of ocean freight on foreign flag vessels to the extent necessary to accomplish the purposes of Title I of the Act. Flexibility in ocean freight financing is deemed necessary to permit reacting in a timely manner to, for example, the emergency needs of countries which can vary widely. No single definition or description of humanitarian or emergency needs is likely to be satisfactory since it could preclude action in unforeseen but critical circumstances.

For many years § 17.9(a)(1) has stated that "Ocean freight will be financed by

CCC only to the extent specifically provided for in the purchase authorization." This section provides the flexibility to finance the ocean freight for U.S. flag vessels to whatever extent deemed necessary. After adoption of the interim rule, both ocean freight differential and non-ocean freight differential portions of U.S. flag shipments to certain countries were financed in addition to freight for non-U.S. flag shipments.

List of Subjects in 7 CFR Part 17

Agricultural commodities, Exports, Finance, Maritime carriers.

Final Rule

PART 17—[AMENDED]

Accordingly, the interim rule published at 50 FR 2949 amending 7 CFR Part 17, Subpart A is adopted as a final rule.

Signed at Washington, D.C., on December 9, 1985.

Melvin E. Sims,

General Sales Manager, Foreign Agricultural Service.

[FR Doc. 86-1083 Filed 1-16-86; 8:45 am]

BILLING CODE 3410-10-M

Farm Credit Administration

12 CFR Part 611

Organization; Effective Date

AGENCY: Farm Credit Administration.

ACTION: Notice of Effective Date.

SUMMARY: The Farm Credit Administration (FCA) published an amended regulation dealing with the incorporation of service organizations by Farm Credit System (System) banks. The former regulation required in the Articles of Incorporation of any System service organization that the stockholders pay all valid claims of creditors in the event of a service organization's insolvency. The amended regulation allows System banks to incorporate service organizations with limited stockholder liability.

The final rule was published in the November 8, 1985 *Federal Register*, and provided that notice of the actual effective date would be subsequently published (50 FR 46417). In accordance with 12 U.S.C. 2252, the effective date of the final rule is 30 days from the date of publication in the *Federal Register* during which either or both Houses of Congress are in session. Based on the records of the sessions of Congress, the effective date of this rule was December 15, 1985.

EFFECTIVE DATE: December 15, 1985.

FOR FURTHER INFORMATION CONTACT:

Kenneth L. Peoples, Office of the General Counsel (703) 883-4024

or

Thomas J. Holland, Office of Examination and Supervision (703) 883-4452, Farm Credit Administration, 1501 Farm Credit Drive, McLean, VA 22102-5090.

(Secs. 1.13, 2.10, 4.12, 5.9, 5.12, 5.18, Pub. L. 92-181, 85 Stat. 619, 620, 621, (12 U.S.C. 2243, 2246, 2252)).

Donald E. Wilkinson,

Governor.

[FR Doc. 86-1081 Filed 1-16-86; 8:45 am]

BILLING CODE 6705-01-M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 230 and 240

[Release Nos. 33-6617; 34-22781; IC-14890 (S7-32-85)]

Filing Fees for Certain Proxy and Information Filings Tender Offers, Mergers and Similar Transactions

AGENCY: Securities and Exchange Commission.

ACTION: Final rules.

SUMMARY: The Securities and Exchange Commission (the "Commission") today announced the adoption of amendments to its rules relating to the imposition and collection of filing fees for certain Securities Exchange Act of 1934 acquisition and business combination transactions. The amendments relate to legislation that requires payment to the Commission of a filing fee calculated on a percentage basis of the transaction's value for tender offers and proxy and information statements involving an acquisition, merger, consolidation or sale or other dispositions of substantially all the assets of a company and certain other filings. The Commission also has adopted conforming amendments to Rule 457 under the Securities Act of 1933 and to other rules and schedules.

EFFECTIVE DATE: February 18, 1986. In the interim the fees will be collected consistent with guidance therein.

FOR FURTHER INFORMATION CONTACT:

Prior to the effective date contact Thomas Sweeney, (202) 272-2589, Office of Disclosure Policy, Division of Corporation Finance, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. After the effective date, contact Mauri Osheroff, Deputy Chief Counsel, (202) 272-2573, Office of Chief Counsel, Division of

Corporation Finance, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549.

SUPPLEMENTARY INFORMATION: The Commission today announced the adoption of new Rule 0-11¹ under the Securities Exchange Act of 1934 ("Exchange Act")² and corresponding amendments to Rule 457³ under the Securities Act of 1933 ("Securities Act")⁴ and Rules 0-9,⁵ 13e-1,⁶ 14a-6⁷ and 14c-5⁸ and Schedules 13E-3,⁹ 13E-4,¹⁰ and 14D-1¹¹ under the Exchange Act. Rule 0-11 and corresponding amendments provide guidance to persons required, as a result of amendments to the Exchange Act, to pay statutory filing fees incurred in connection with certain acquisition and business combination transactions.¹²

I. Executive Summary

In July 1985, the Commission proposed rule provisions to codify administrative practice and provide guidance as to the fee required at the time of filing certain documents in connection with tender offers, mergers and similar Exchange Act business combination transactions.¹³ The fees were imposed by 1983 amendments to the Exchange Act¹⁴ which added Sections 13(e)(3),¹⁵

¹ 17 CFR 240.0-11.

² 15 U.S.C. 78a-78kk (1982), as amended by Act of June 6, 1983, Pub. L. No. 98-38, 97 Stat. 205 (1983).

³ 17 CFR 230.457.

⁴ 15 U.S.C. 77a-77aa (1982).

⁵ 17 CFR 240.0-9.

⁶ 17 CFR 240.13e-1.

⁷ 17 CFR 240.14a-6.

⁸ 17 CFR 240.14c-5.

⁹ 17 CFR 240.13e-100.

¹⁰ 17 CFR 240.13e-101.

¹¹ 17 CFR 240.14d-100.

¹² The filings subject to the new fee are: (a) Schedule 13E-4 filed pursuant to Rule 13e-4 (17 CFR 240.13e-4); (b) Schedule 14D-1 filed pursuant to Rule 14d-3 (17 CFR 240.14d-3); (c) preliminary proxy material filed pursuant to Rule 14a-6 (17 CFR 240.14a-6) relating to a proposed acquisition, merger, consolidation or sale or other disposition of substantially all the assets of the issuer; (d) preliminary information statements filed pursuant to Rule 14c-5 (17 CFR 240.14c-5) relating to such transactions; (e) Schedule 13E-3 filed pursuant to Rule 13e-3 (17 CFR 240.13e-3) in connection with the acquisition of securities; and (f) a disclosure statement filed pursuant to Rule 13e-1. There is no fee assessed for filing a Schedule 14D-9 (17 CFR 240.14d-101).

¹³ Release No. 33-6593 (July 1, 1985) [50 FR 28404].

¹⁴ Act of June 6, 1983, Pub. L. No. 98-38, 97 Stat. 205 (1983), H.R. Rep. No. 98-106, 98th Cong., 1st Sess. 1-2, 5-6 (1983) (hereinafter H.R. Rep. No. 98-106). The Commission announced the enactment and effectiveness of this legislation in Release No. 34-19870 [June 13, 1983] [48 FR 27524].

¹⁵ 15 U.S.C. 78m(e)(3).

and 14(g)¹⁶ to the statute to require persons filing specified documents to pay, at the time of filing with the Commission, a fee of one-fiftieth of one percent of the value of the transaction.¹⁷ The rule proposal included a new rule under the Exchange Act, Rule 0-11, that governs filing fees for Exchange Act business combination transactions. Also proposed were corresponding amendments to (1) Rule 457 under the Securities Act, (2) Rules 0-9 and 13e-1 and Schedules 13E-3, 13E-4 and 14D-1 under the Exchange Act, and (3) in a contemporaneous release proposing comprehensive revisions to the proxy rules and schedules,¹⁸ Rules 14a-6 and 14c-5.

The proposals elicited four public comments¹⁹ which generally supported the proposed rule revisions concerning filing fees for tender offers, mergers and similar transactions. Accordingly, the Commission is adopting the amendments substantially as proposed.

In addition to codifying fees established by the legislation and reflecting administrative practice thereunder, the amendments provide additional guidance on the method of valuation of the securities sought, depending on whether the securities are to be purchased for cash or other consideration. The amendments also specify: (1) That the fee is to be paid by the person making the filing, except that in the case of proxy or information statements involving two or more companies subject to the Commission's proxy or information statement rules, each person shall pay a proportionate share of such fee; (2) that where a transaction involves more than one filing requirement or the registration provisions of the Securities Act, the

payment of the fee with the initial filing will offset any subsequent filing fee obligation; and (3) that any increase in consideration offered will require an additional fee to be paid.

This release discusses the operation of the Commission's business combination transaction fee rules and conforming amendments as well as modifications of the rules made in response to public comments.

II. Discussion

A. Rule 0-11 under the Exchange Act for Filing Fees for Certain Acquisitions, Dispositions and Similar Transactions.

Rule 0-11 sets forth the basic requirements with respect to fees for all Exchange Act filings subject to the new filing fee. The rule is divided into four paragraphs, and contains the general requirements for every transaction subject to the rule. Paragraph (a)(1) sets forth the general fee requirement. Paragraph (a)(2) specifies that only one fee per transaction is required and makes explicit that: (1) Any required fee is to be reduced in an amount equal to any fee paid under section 6(b) of the Securities Act²⁰ or any other provision of the rule; and (2) fees required to be paid under section 6(b) of the Securities Act shall be reduced by the amount already paid under this rule. Thus, in a multi-step transaction, the fee is to be calculated with respect to each step. Where, however, any or all of the fee in connection with a step already has been paid in connection with the filing for a prior step, there is an offset provision. For example, a tender offer for any and all shares of a target company necessitates a fee related to the price of acquiring 100% of the target; if less than all shares are tendered and a subsequent merger occurs, the fee paid in connection with the initial tender offer is to be applied against the fee required in connection with the merger. The offset provision generally will not come into play in the case of a tender offer for less than all of the shares of the target followed by a merger, since the fee paid for the first step of the transaction only applies to a portion of the target's outstanding shares.

²⁰ Section 6(b) of the Securities Act requires at the time of filing the registration statement a fee of one-fiftieth of one percent of the maximum aggregate offering price but in no case a fee of less than \$100. The Commission also is adopting a corresponding amendment to Rule 457 under the Securities Act that adds paragraph (b) to provide that any required fee is to be reduced in an amount equal to any fee paid under sections 13(e) and 14(g) of the Exchange Act. Thus, if the entire fee is paid pursuant to section 13(e) or 14(g) of the Exchange Act, no fee, including the \$100 minimum fee under section 6(b) of the Securities Act, need be paid with the Securities Act registration statement.

Paragraph (a)(3) of Rule 0-11 provides that an increase in the aggregate consideration offered triggers an additional filing fee based upon the amount of the increased consideration. This additional fee is applicable whether the increased consideration is the result of an increase in the amount of securities sought or an increase in the per share consideration.²¹

Paragraph (a)(4) of Rule 0-11 sets forth the method of determining the value of the securities upon which to base the filing fee. The rule provides a valuation method that generally parallels the provisions of Rule 457(e) under the Securities Act relating to the computation of the filing fee for registered exchange offers. In general, where securities are to be acquired in exchange for securities or other non-cash consideration, the value of the securities proposed to be purchased for such consideration is based upon the market value of the securities to be acquired by the filing person.

In response to concern expressed by commentators who found the proposed language confusing, the Commission has modified the language to specify the method of valuation. In determining the market value of the securities, the valuation is based upon the average of the high and low prices reported in the consolidated transaction reporting systems for exchange traded securities and national market system reported over-the-counter securities or the average of the bid and asked price for other over-the-counter securities as of a specified date within 5 business days prior to filing.²² This formulation is consistent with the transaction reporting of prices by exchanges and the over-the-counter markets under Rule 11Aa3-1.²³

Where there is no market for the securities being acquired by the filing person, then the book value of the securities computed as of the latest

²¹ This provision is consistent with existing interpretations of Rule 457 (a) and (e), whereby an increase in the consideration offered by means of an increase in the exchange ratio and therefore the number of securities to be offered would necessitate an additional filing fee. If the increase in consideration involves cash rather than additional securities, however, the proposed Exchange Act fee treatment would differ from that of the Securities Act because section 6(b) of the Securities Act ties the fee to the securities, not to the value of the cash portion of an offer.

²² A similar change is reflected in the amendment to Rule 457 concerning the method of determining the market value of securities. The Commission has determined, in view of the rapid pace of current securities markets, that the 5 business day period provides the appropriate measure for the fee calculation by more closely matching the fee calculation to market conditions.

²³ 17 CFR 240.11Aa3-1.

¹⁶ 15 U.S.C. 78n(g).

¹⁷ The 1983 amendments were intended to equalize fees assessed for various types of equivalent business transactions involving tender offers, mergers and consolidations, whether the transaction involves a filing under the Securities Act or the Exchange Act. Under the Securities Act, a fee of one-fiftieth of one percent is required to be paid in connection with exchange offers and proxy solicitations for mergers with securities offered as consideration. Yet, prior to the amendments, no fees were required under the Exchange Act in connection with cash tender offers while fees of \$125 and \$1,000 were assessed in connection with proxies for the sale of assets and cash merger proxies, respectively. See H.R. Rep. No. 98-106, *supra* at 5.

¹⁸ Release No. 34-22195 (July 1, 1985) [50 FR 29409].

¹⁹ The comments included two letters from public corporations, one from the Association of the Bar of the City of New York and one telephone call from an individual. A memorandum of the telephonic comment as well as the comment letters are available for public inspection and copying in the Commission's Public Reference Room (See File No. 87-32-85).

practicable date prior to the date of filing is used to value the securities. If, however, the acquired person is in bankruptcy or receivership or has an accumulated capital deficit, one-third of the principal amount, par value or stated value of the securities is used.

Finally, paragraph (a)(5) requires that filings subject to the rule which are not required to contain a table showing the calculation of the filing fee be accompanied by a transmittal letter giving the equivalent information. As noted below, the Commission also is adopting amendments that add a fee-calculation table to the facing pages of Schedules 13E-3, 13E-4 and 14D-1. The transmittal letter requirement thus only applies to other filings.

Paragraphs (b) through (d) of Rule 0-11 relate to specific Exchange Act filings and carry over the valuation method and other relevant fee provisions contained in Rule 457 under the Securities Act. Under Rule 0-11(b), a fee of one-fiftieth of one percent of the value of the securities proposed to be acquired is to be paid when a statement required pursuant to section 13(e)(1) of the Exchange Act is filed.²⁴ Paragraphs (b) (1) and (2) specify the method of valuation of the securities sought. Where the securities are to be purchased for cash, the securities are to be valued at the cash price to be paid for the securities. Where the payment for the securities includes consideration other than cash, the rule provides that the value of the securities to be received by the acquiring person, determined in accordance with paragraph (a)(4) of the rule, is used as the basis for calculating the fee.

Rule 0-11(c) governs the calculation of the fee required when a preliminary proxy statement pursuant to Rule 14a-6 or preliminary information statement pursuant to Rule 14c-5 is filed concerning an acquisition, merger, consolidation or proposed sale or other disposition of substantially all the assets of the company.²⁵ As required by the

legislation, the calculation of the fee varies depending upon the nature of the transaction. In the case of an acquisition, merger or consolidation, the fee payable is one-fiftieth of one percent of any proposed cash payment, or the value of securities or other property proposed to be transferred to security holders.²⁶ In the case of a filing relating to a proposed sale or other disposition of substantially all the assets of an issuer, the rule provides that the one-fiftieth of one percent fee be based upon the aggregate of any proposed cash payment and the value of the securities or other property proposed to be received by the issuer upon such sale or disposition. Where the issuer is not to receive consideration for such disposition, e.g. in a spin-off or liquidation, the fee is based on the value of the securities and other property distributed to security holders.

Rule 0-11(c) (1) and (2) applies to proxy or information statements involving a vote on certain matters. This includes any proxy or information statements involving a vote which indirectly serves as the equivalent of a vote on one of the matters specified. For example, if a proxy statement is filed in connection with a vote to approve the authorization of additional securities that are to be used to acquire another specified company, and the registrant's shareholders will not have a separate opportunity to vote upon the transaction, the vote to authorize the securities also is a vote with respect to the acquisition. The fee called for by Rule 0-11 therefore is required.²⁷

Rule 0-11(c)(1)(ii) reflects the adoption as proposed of an exception from the percentage-based fee for mergers, consolidations or similar transactions for which the sole purpose is to change the company's domicile. In such transactions the fee assessed would be \$125. As the proposing release noted, in determining whether a business combination transaction falls within the exception, the Commission shall apply the same interpretation of such provision as is applied to a similar provision in Rule 145(a)(2) under the Securities Act.²⁸

²⁴ These statements include a statement concerning the purchase of securities by the issuer required by Rule 13e-1, a Rule 13e-3 transaction statement (Schedule 13E-3) and a Rule 13e-4 issuer tender offer statement (Schedule 13E-4).

²⁵ The word "registrant" used in paragraph (c) of the rule has the same meaning it would if the Commission's proposed proxy rule revisions are adopted, i.e., the issuer of the securities in respect of which proxies are to be solicited (or an information statement furnished). See Release No. 33-6592 (July 1, 1985) [50 FR 29409]. The proposed proxy rule revisions included amendments to Rules 14a-6 and 14c-5 which refer specifically to proposed Rule 0-11. As noted above, these conforming amendments are being adopted as part of this rulemaking action.

²⁶ When the consideration does not consist entirely of cash, its value is determined by reference to the value of the securities or property being received by the acquiring person.

²⁷ This is consistent with the Commission's position on disclosure in such proxy statements, which is reflected in Note A to Schedule 14A, 17 CFR 240.14A-101, as proposed to be amended (Release No. 33-6592).

²⁸ 17 CFR 230.145(a)(2). Rule 145(a)(2) excepts from the rule's application to mergers and consolidations a statutory merger or consolidation or similar plan in which securities of such corporation or other person held by such security

holders will become or be exchanged for securities of any other person if the sole purpose of the transaction is to change an issuer's domicile solely within the United States. Under the Commission's interpretations of Rule 145(a)(2), the exception generally has been inapplicable to a transaction involving the formation of a holding company or a reorganization under a different type of statute within the same state.

Paragraph (4) of Rule 0-11(c) exempts from the fee requirement any proxy statement filed by a company registered under the Investment Company Act of 1940,²⁹ as provided by section 14(g) of the Exchange Act. Accordingly, an investment company filing a proxy statement which would otherwise come within this rule should continue to pay the fee currently required.³⁰

Finally, Rule 0-11(d) sets forth the fee assessed for tender offer filings on Schedule 14D-1. A filing fee of one-fiftieth of one percent of the amount of cash or the value of securities or other property proposed to be offered by the bidder must accompany the initial Schedule 14D-1 filing. The same calculation methodology and valuation criteria set forth in Rule 0-11(b) and (c) generally apply to Schedule 14D-1 filings.³¹

B. *Corresponding Amendments.* In addition to adopting new Rule 0-11 relating to the Exchange Act fee requirement for cash tender offers and the proxy and information statements involving certain business combinations, the Commission is adopting corresponding amendments: (1) to amend Rule 0-9³² to require that the fee called for by Rule 0-11 be paid by cash, certified check or the equivalent;³³ (2) to reflect new Rule 0-11 in Rule 13e-1,³⁴

²⁹ 15 U.S.C. 80a-1—80a-64, as amended by Act of October 21, 1980, Pub. L. No. 96-477, 94 Stat. 2275 (1980).

³⁰ See Rule 20a-1 (17 CFR 270.20a-1).

³¹ When the transaction is an unsolicited exchange offer for securities for which there is no market, and the fee is to be based upon the book value of the securities to be received by the bidder, the bidder may not be in a position to require the target to compute its book value as of the latest practicable date. In this event, the staff will not object if the bidder calculates the fee based upon the book value of the securities as of the most recent date for which such information is publicly available.

³² Rule 0-9 specifies the method of payment of Exchange Act fees, and states that all such fees should be paid in accordance with 17 CFR 202.3a.

³³ This is consistent with the treatment of such fees under the Securities Act, which are not permitted to be paid by personal check.

³⁴ Paragraph (b) of Rule 13e-1 as amended provides that the initial statement is to be accompanied by a fee payable to the Commission in accordance with Rule 0-11.

Rule 14a-6³⁵ and Rule 14c-5;³⁶ (3) to add to the facing pages of Schedules 13E-3, 13E-4 and 14D-1 a table showing the calculation of the filing fee similar to that required on Securities Act registration statement forms;³⁷ (4) to reflect in instruction number 2 of the Special Instructions for Complying with Schedule 14D-1 that a filing fee is required to be filed in accordance with Rule 0-11; and (5) to amend rule 457, as noted above, to be consistent with the new for structure and to update the language on calculating the market value of securities to be consistent with that in Rule 0-11.

III. Regulatory Flexibility Act Consideration

Pursuant to section 605(b) of the Regulatory Flexibility Act [5 U.S.C. 605(b)], the Chairman of the Commission has certified that the rules regarding Exchange Act filing fees for certain acquisitions and business combination transactions will not have a significant impact on a substantial number of small entities. This certification, including the reasons therefor, is attached to this release.

IV. Statutory Basis and Text of Amendments Authority

The amendments to the Commission's rules and forms are being adopted by the Commission pursuant to sections 6, 7 and 19(a) of the Securities Act of 1933 and sections 12, 13, 14 and 23(a) of the Securities Exchange Act of 1934. As required by section 23(a) of the Exchange Act, the Commission has considered specifically the impact that the rulemaking actions in revising 17

CFR Parts 230 and 240 taken pursuant to the various provisions of the Exchange Act would have on competition, and has concluded that they would impose no significant burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act.

List of Subjects in 17 CFR Parts 230 and 240

Reporting and recordkeeping requirements, Securities.

Text of Amendments

In according with the foregoing, Title 17, Chapter II of the Code of Federal Regulations is amended as follows:

PART 230—GENERAL RULES AND REGULATIONS, SECURITIES ACT OF 1933

1. The authority citation for Part 230 continues to read, in part, as follows: (Citations before * * * indicate general rulemaking authority).

Authority: Sec. 19(a), 48 Stat. 85, as amended, 15 U.S.C. 77s. * * * § 230.457 also issued under sections 6 and 7, 15 U.S.C. 77f and 77g.

2. By redesignating paragraphs (b)-(m) as paragraphs (c)-(n); by amending the reference to "(e) (1) or (2)" in redesignated paragraph (f)(3) to read "paragraph (f) (1) or (2)"; and by adding a new paragraph (b) to § 230.457 and revising the paragraphs redesignated (c), (f)(1), (g)(3) (in the second sentence of paragraph (g)), and (h) to read as follows:

§ 230.457 Computation of fee.

(b) A required fee shall be reduced in an amount equal to any fee paid with respect to such transaction pursuant to sections 13(e) and 14(g) of the Securities Exchange Act of 1934 or any applicable provision of this section; the fee requirements under sections 13(e) and 14(g) shall be reduced in an amount equal to the fee paid the Commission with respect to a transaction under this section. No part of a filing fee is refundable.

(c) Where securities are to be offered at prices computed upon the basis of fluctuating market prices, the registration fee is to be calculated upon the basis of the price of securities of the same class, as follows: either the average of the high and low prices reported in the consolidated reporting system (for exchange traded securities and last sale reported over-the-counter securities) or the average of the bid and asked price (for other over-the-counter securities) as of a specified date within 5

business days prior to the date of filing the registration statement.

(f) * * *

(1) Upon the basis of the market value of the securities to be received by the registrant or canceled in the exchange or transaction as established by the price of securities of the same class, as determined in accordance with paragraph (c) of this section.

(g) * * * (3) the price of securities of the same class, as determined in accordance with paragraph (c) of this section. * * *

(h) Where securities are to be offered to employees pursuant to an employee stock purchase, savings, or similar plan, the aggregate offering price and the amount of the registration fee shall be computed only with respect to the aggregate contributions of employees, except that if employees may choose the medium in which the employer's contributions are to be invested the aggregate offering price shall include the employer's contributions. Where stock is to be offered to employees pursuant to an employee stock option plan, the aggregate offering price and the amount of the fee shall be computed upon the basis of the price at which the option may be exercised or, if such price is not known, upon the basis of the price of securities of the same class, as determined in accordance with paragraph (c) of this section. Where securities are to be offered to employees pursuant to a bonus plan or similar noncontributory plan, the aggregate offering price and amount of the fee shall be computed on the basis of the price of securities of the same class, as determined in accordance with paragraph (c) of this section. If there is no market for the securities to be offered, the book value of such securities computed as of the latest practicable date prior to the date of filing the registration statement shall be used.

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

3. The authority citation for Part 240 continues to read as follows: (Citations before * * * indicate general rulemaking authority).

Authority: Sec. 23, 48 Stat. 901, as amended, 15 U.S.C. 78w. * * * §§ 240.0-9, 0-11, 13e-1, 13e-100, 13e-101 and 14d-100 also issued under Sections 12, 13 and 14, 15 U.S.C. 781, 78m and 78n.

³⁵ Paragraph (i) of Rule 14a-6 as amended provides that for proxy material involving acquisitions, mergers, spin-offs, consolidations or proposed sales or other dispositions of substantially all the assets of the company, a fee established in accordance with Rule 0-11 shall be paid.

³⁶ New paragraph (f) of Rule 14c-5 provides that at the time of filing the preliminary information statement, the registrant shall pay to the Commission a fee of \$125, no part of which shall be refunded, except, however, when filing a preliminary information statement regarding an acquisition, merger, spinoff, consolidation or proposed sale or other disposition of substantially all the assets of the company the registrant shall pay a fee established in accordance with Rule 0-11.

³⁷ The table calls for the amount of the fee and the value of the securities used in its computation. Where a filing fee is not required to accompany the Schedule being filed, the table requires the identification of the document with which the fee has been filed and the date of its filing. This information is necessary to assist the Commission's Office of Applications and Reports Services in processing the filing. In this regard, Rule 0-11(a)(5) requires that a filing not calling for a fee calculation table (i.e., a Rule 13e-1 disclosure statement or a proxy or information statement) be accompanied by a letter of transmittal with the equivalent information.

4. By revising § 240.0-9 to read as follows:

§ 240.0-9 Payment of fees.

All payment of fees except those required by § 240.0-11 of this chapter shall be made in cash, certified check, personal check, or by United States postal money order, bank cashier's check or bank money order payable to the Securities and Exchange Commission, omitting the name or title of any official of the Commission. Payment of fees required by § 240.0-11 shall be made in the same manner except that payment by personal check shall not be permitted. Payment of fees required by this section shall be made in accordance with the directions set forth in § 202.3a of this chapter.

5. By adding § 240.0-11 to read as follows:

§ 240.0-11 Filing fees for certain acquisitions, dispositions and similar transactions.

(a) *General.* (1) At the time of filing a disclosure document described in paragraphs (b) through (d) of this section relating to certain acquisitions, dispositions, business combinations, consolidations or similar transactions, the person filing the specified document shall pay a fee payable to the Commission to be calculated as set forth in paragraphs (b) through (d) of this section.

(2) Only one fee per transaction is required to be paid. A required fee shall be reduced in an amount equal to any fee paid with respect to such transaction pursuant to either Section 6(b) of the Securities Act of 1933 or any applicable provision of this rule; the fee requirements under Section 6(b) shall be reduced in an amount equal to the fee paid the Commission with respect to a transaction under this regulation. No part of a filing fee is refundable.

(3) If at any time after the initial payment the aggregate consideration offered is increased, an additional filing fee based upon such increase shall be paid with the required amended filing.

(4) When the fee is based upon the market value of securities, such market value shall be established by either the average of the high and low prices reported in the consolidated reporting system (for exchange traded securities and last sale reported over-the-counter securities) or the average of the bid and asked price (for other over-the-counter securities) as of a specified date within 5 business days prior to the date of the filing. If there is no market for the securities, the value shall be based upon the book value of the securities computed as of the latest practicable

date prior to the date of the filing, unless the issuer of the securities is in bankruptcy or receivership or has an accumulated capital deficit, in which case one-third of the principal amount, par value or stated value of the securities shall be used.

(5) If the filing requiring the payment of the fees does not require a facing sheet showing the calculation of the fee, the filing shall be accompanied by a letter of transmittal stating the amount of the filing fee and how it was determined, as well as the amount offset by a previous filing and the identification of such filing, if applicable.

(b) *Section 13(e)(1) Filings.* At the time of filing such statement as the Commission may require pursuant to section 13(e)(1) of the Exchange Act, a fee of one-fiftieth of one percent of the value of the securities proposed to be acquired by the acquiring person. The value of the securities proposed to be acquired shall be determined as follows:

(1) The value of the securities to be acquired solely for cash shall be the amount of cash to be paid for them:

(2) The value of the securities to be acquired with securities or other non-cash consideration, whether or not in combination with a cash payment for the same securities, shall be based upon the market value of the securities to be received by the acquiring person as established in accordance with paragraph (a)(4) of this section.

(c) *Proxy and information statement filings.* At the time of filing a preliminary proxy statement pursuant to Rule 14a-6(a) or preliminary information statement pursuant to Rule 14c-5(a) that concerns a merger, consolidation, acquisition of a company, or proposed sale or other disposition of substantially all the assets of the registrant (including a liquidation), the following fee:

(1) For preliminary material involving a vote upon a merger, consolidation or acquisition of a company, a fee of one-fiftieth of one percent of the proposed cash payment or of the value of the securities and other property to be transferred to security holders in the transaction. The fee is payable whether the registrant is acquiring another company or being acquired.

(i) The value of securities or other property to be transferred to security holders, whether or not in combination with a cash payment for the same securities, shall be based upon the market value of the securities to be received by the acquiring person as established in accordance with paragraph (a)(4) of this section.

(ii) Notwithstanding the above, where the acquisition, merger or consolidation

is for the sole purpose of changing the registrant's domicile, the filing fee shall be \$125.

(2) For preliminary material involving a vote upon a proposed sale or other disposition of substantially all the assets of the registrant, a fee of one-fiftieth of one percent of the aggregate of the cash and the value of the securities (other than its own) and other property to be received by the registrant. In the case of a disposition in which the registrant will not receive any property, such as at liquidation or spin-off, the fee shall be one-fiftieth of one percent of the aggregate of the cash and the value of the securities and other property to be distributed to security holders.

(i) The value of the securities to be received (or distributed in the case of a spin-off or liquidation) shall be based upon the market value of such securities as established in accordance with paragraph (a)(4) of this section.

(ii) The value of other property shall be a bona fide estimate of the fair market value of such property.

(3) Where two or more companies are involved in the transaction, each shall pay a proportionate share of such fee, determined by the persons involved.

(4) Notwithstanding the above, the fee required by this paragraph (c) shall not be payable for a proxy statement filed by a company registered under the Investment Company Act of 1940.

(d) *Schedule 14D-1 filings.* At the time of filing a Schedule 14D-1, a fee of one-fiftieth of one percent of the aggregate of the cash or of the value of the securities or other property offered by the bidder. Where the bidder is offering securities or other non-cash consideration for some or all of the securities to be acquired, whether or not in combination with a cash payment for the same securities, the value of the consideration to be offered for such securities shall be based upon the market value of the securities to be received by the bidder as established in accordance with paragraph (a)(4) of this section.

6. By redesignating paragraph (b) as paragraph (c) and adding a new paragraph (b) to § 240.13e-1 to read as follows:

§ 240.13e-1 Purchase of securities by issuer thereof.

(b) The initial statement shall be accompanied by a fee payable to the Commission as required by § 240.0-11.

7. By adding the "Calculation of Filing Fee" schedule to § 240.13e-100 before the heading "Instruction" to read as follows:

§ 240.13e-100 Schedule 13E-3 [§ 240.13e-3], Rule 13e-3 transaction statement pursuant to section 13(e) of the Securities Exchange Act of 1934 and rule 13e-3 [§ 240.13e-3] thereunder.

CALCULATION OF FILING FEE

Transaction valuation*	Amount of filing fee

*Set forth the amount on which the filing fee is calculated and state how it was determined.

- [] Check box if any part of the fee is offset as provided by Rule 0-11(a)(2) and identify the filing with which the offsetting fee was previously paid. Identify the previous filing by registration statement number, or the Form or Schedule and the date of its filing.

Amount Previously Paid: _____
Form or Registration No.: _____
Filing Party: _____
Date Filed: _____

8. By adding the "Calculation of Filing Fee" schedule to § 240.13e-101 before the italic heading "Instructions" to read as follows:

§ 240.13e-101 Schedule 13E-4. Tender offer statement pursuant to section 13(e)(1) of the Securities Exchange Act of 1934 and § 240.13e-4 thereunder.

CALCULATION OF FILING FEE

Transaction valuation*	Amount of filing fee

*Set forth the amount on which the filing fee is calculated and state how it was determined.

- [] Check box if any part of the fee is offset as provided by Rule 0.11(a)(2) and identify the filing with which the offsetting fee was previously paid. Identify the previous filing by registration statement number, or the Form or Schedule and the date of its filing.

Amount Previously Paid: _____
Form or Registration No.: _____
Filing Party: _____
Date Filed: _____

9. By revising paragraph (i) of § 240.14a-6 to read as follows:

§ 240.14a-6 Material required to be filed.

(i) *Fees.* At the time of filing the preliminary proxy solicitation material, the persons upon whose behalf the solicitation is made, other than companies registered under the Investment Company Act of 1940, or where an application or declaration under the Public Utility Holding Company Act of 1935 is involved, shall

pay the Commission the following applicable fee: (1) For preliminary proxy material which solicits proxies for election of directors or other business for which a stockholder vote is necessary, but apparently no controversy is involved, a fee of \$125; (2) for proxy material where a contest as set forth in Rule 14a-11 is involved, a fee of \$500 from each party to the controversy; and (3) for proxy material involving acquisitions, mergers, spin-offs, consolidations or proposed sales or other dispositions of substantially all the assets of the company, a fee established in accordance with Rule 0-11, (§ 240.0-11 of this chapter), shall be paid. No refund shall be given.

10. By revising the section heading and adding new paragraph (f) to § 240.14c-5 to read as follows:

§ 240.14c-5 Filing requirements.

(f) *Fees.* At the time of filing the preliminary information statement the registrant shall pay to the Commission a fee of \$125, no part of which shall be refunded, except, however, when filing a preliminary information statement regarding an acquisition, merger, spin-off, consolidation or proposed sale or other disposition of substantially all the assets of the company, the registrant shall pay the Commission a fee established in accordance with Rule 0-11, (§ 240.0-11 of this chapter).

11. By adding the "Calculation of Filing Fee" schedule before the first "Note" and revising Instruction 2 to the Special Instruction for complying with Schedule 14D-1 of § 240.14d-100 to read as follows:

§ 240.14d-100 Schedule 14D-1. Tender offer statement pursuant to section 14(d)(1) of the Securities Exchange Act of 1934.

CALCULATION OF FILING FEE

Transaction valuation*	Amount of filing fee

*Set forth the amount on which the filing fee is calculated and state how it was determined.

- [] Check box if any part of the fee is offset as provided by Rule 0-11(a)(2) and identify the filing with which the offsetting fee was previously paid. Identify the previous filing by registration statement number, or the Form or Schedule and the date of its filing.

Amount Previously Paid: _____
Form or Registration No.: _____
Filing Party: _____

Date Filed: _____

Special Instructions for Complying With Schedule 14D-1

Instructions. * * *
2. This statement shall be accompanied by a fee payable to the Commission as required by § 240.0-11.

By the Commission.

John Wheeler,

Secretary.

January 9, 1986.

Regulatory Flexibility Act Certification

I, John S.R. Shad, Chairman of the Securities and Exchange Commission, hereby certify, pursuant to 5 U.S.C. 605(b), that the amendments to rules pertaining to the imposition and collection of Securities Exchange Act filing fees for certain acquisition and business combination transactions will not, if promulgated, have a significant economic impact on a substantial number of small entities. The filing fees are to be assessed on a percentage basis, at a rate established by legislation that is already applicable to the affected transactions; in addition, these fees are to be paid only by persons already required to file certain documents in connection with acquisitions, mergers, consolidations and other transactions, and hence impose no new reporting or recordkeeping requirements.

John S.R. Shad.

January 9, 1986.

[FR Doc. 86-1122 Filed 1-16-86; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 73

[Docket No. 84C-0298]

Poly(Hydroxyethyl Methacrylate)-Dye Copolymers; Listing of Color Additives for Coloring Contact Lenses; Confirmation of Effective Date

AGENCY: Food and Drug Administration.

ACTION: Final rule; confirmation of effective date.

SUMMARY: The Food and Drug Administration (FDA) is confirming the effective date of December 9, 1985, for the regulation that provides for the safe use in coloring contact lenses of the